



UNIVERSITY OF  
**TORONTO**  
FACULTY OF LAW



# **ADMINISTRATIVE LAW**

## **CASE BOOK VOLUME III**

**Freya Kristjanson**

**and**

**Leslie McIntosh**

**Storage**

**KE  
5015  
.A7K75  
2008  
v.3  
c.1**

**Faculty of Law University of Toronto**

**Spring 2008**

BORA LASKIN LAW LIBRARY

JAN - 7 2008

FACULTY OF LAW  
UNIVERSITY OF TORONTO

# **ADMINISTRATIVE LAW**

## **CASE BOOK VOLUME III**


**Freya Kristjanson**

**and**

**Leslie McIntosh**

**Faculty of Law University of Toronto**

**Spring 2008**



Digitized by the Internet Archive  
in 2018 with funding from  
University of Toronto

<https://archive.org/details/administrativa03kris>

**ADMINISTRATIVE LAW  
SPRING SEMESTER 2008**

**Adjunct Professors Freya Kristjanson and Leslie McIntosh**

Office Hours: Freya Kristjanson  
Borden Ladner Gervais LLP  
40 King Street West, Suite 4100  
By appointment (416-367-6388); and  
by email: [fkristjanson@blgcanada.com](mailto:fkristjanson@blgcanada.com)

Leslie McIntosh  
Crown Law Office - Civil  
720 Bay Street, 8th Floor  
By appointment (416-326-4148); and  
by email: [Leslie.Mcintosh@jus.gov.on.ca](mailto:Leslie.Mcintosh@jus.gov.on.ca)

Class Hours: Tuesdays and Thursdays, 8:30am-10:30am

## **Overview**

Administrative law is the study of how governments and administrative tribunals may affect the rights and interests of individuals and groups, as well as the role of the courts in superintending governmental action. Administrative law issues arise in a diverse range of settings, including immigration and refugee law, labour law, health law, human rights law, environmental law, securities, banking and competition regulation, professional discipline, and decision-making in universities, hospitals and municipalities. The course will consider the rules and principles applicable to various kinds of decision-makers including government ministers, officials, administrative boards and tribunals, agencies and commissions. Specific topics include: the rule of law, procedural fairness considerations that govern investigation, rule-making, and adjudication by administrative agencies, the right to a hearing and the law of bias, the standard of review of decisions of governmental actors, remedies for abuse of discretion, and the application of the Charter and constitutional principles in the administrative realm. Throughout the course the overriding questions will be: How is the public interest to be determined? How should the protection of individual and group rights and interests be balanced against the goals asserted by the government or agency?

## **Texts**

There is case book, Kristjanson & McIntosh, *Administrative Law*, 2008. The syllabus sets out the cases. Specific readings will be assigned in class or by Blackboard postings.

## **Blackboard**

There will be a Blackboard page for this course. Readings may be assigned by Blackboard and hand-outs may be posted on the Blackboard.

## Recommended Reading

For those seeking additional readings, the following sources are recommended:

- D. Mullan, *Administrative Law: Cases, Text and Materials (5<sup>th</sup> Ed.)* (Toronto: Emond Montgomery, 2003)
- Brown and Evans, *Judicial Review of Administrative Action* (Brown & Evans, 1998) (Canada) (Looseleaf ed.)
- D. Mullan, *Administrative Law* (Toronto: Irwin, 2001)
- MaCaulay & Sprague, *Practice and Procedure before Tribunals* (Toronto: Carswell, 1988) (Looseleaf ed.)
- Blake, *Administrative Law in Canada*, (3<sup>rd</sup> ed. Butterworths, 2001) (Canada)
- Bryant & Sossin, *Public Law* (Toronto: Carswell, 2002)
- Davis & Pierce, *Administrative Law Treatise* (3<sup>rd</sup> ed. Little Brown 1994) (U.S.)

## Evaluation

There will be a final, 3-hour open-book examination (100%). In addition, students may opt for a no-downside Advocacy Option, which will be worth 50%. The Advocacy Option involves a practicum with Downtown Legal Services (DLS) or Advocates for Injured Workers (AIW) in which students, supervised by a lawyer, take on at least one file or equivalent workload involving a case before an administrative tribunal. Students must write a short paper (10 double-spaced pages) on insights into administrative law issues gained as a result of this experience. The paper is due no later than the set deadline for written work at the end of term.

## Course Outline

All page references are to the 2008 Administrative Law Case Book (CB), by volume number (CB I, CB II, CB III).

## **CLASS #1 - TUESDAY, JANUARY 8**

### **Introduction to Administrative Law**

## **CLASS #2 - THURSDAY, JANUARY 10**

### **I. Foundations of the Modern Administrative State**

1. David J. Mullan, "The Administrative State and the Rule of Law", *Administrative Law Cases, Texts and Materials* (5<sup>th</sup> Ed.), [2003: Edmond Montgomery Publications Ltd., Toronto] ("Mullan"), pp. 3-35, CB I., p. 1

## **CLASS #3 - TUESDAY, JANUARY 15**

### **II. The Duty of Fairness**

#### **A. Evolution of the Duty of Fairness**

1. *Calgary Power Ltd. v. Copithorne*, [1959] S.C.R. 24, 16 D.L.R. (2d) 241, CB I., p. 18
2. *Nicholson v. Haldimand-Norfolk* (1979), 88 D.L.R. 671 (S.C.C.), CB I., p. 26
3. *Martineau v. Matsqui Inmate Disciplinary Board*, [1980] 1 S.C.R. 602, CB I., p. 33

## **CLASS #4 - THURSDAY, JANUARY 17**

### **B. The Duty of Fairness – The Modern Expression**

#### **(a) Common Law**

1. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193, CB I., p. 47

#### **(b) Charter**

1. *Suresh v. Canada (Minister of Citizenship and Immigration)*, (2002), 208 D.L.R. (4<sup>th</sup>) 1, paras. 113-128, CB I., p. 68.

## **CLASS #5 - TUESDAY, JANUARY 22**

### **III. Threshold – When Does the Duty Arise?**

#### **A. Decisions Affecting Rights/Privileges/Interests**

1. *Re Webb and Ontario Housing Corporation* (1978), 22 O.R. (2d) 257 (C.A.), 93 D.L.R. (3d) 187, CB I., p. 75



2. *Re Collins et. al. and Pension Commission of Ontario et. al.* (1986), 56 O.R. (2d) 274 (Div. Ct.) , CB I., p. 82

B. No Fairness Duty: General Policy /Legislative Decision-Making

1. *Mullan*, pp. 147-152, CB I., p. 90
2. *Canada (Attorney General) v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735, 115 D.L.R. (3d) 1 (Fed.) , CB I., p. 94
3. *Authorson v. Canada (Attorney General)*, 2003 S.C.C. 39, 227 D.L.R. (4<sup>th</sup>) 385, CB I., p. 104

**CLASS #6 - THURSDAY, JANUARY 24**

C. Investigating/Advising/Recommending

1. *Mullan*, pp. 166-170, CB I., p. 113
2. *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System- Krever Commission)*, [1997] 3 S.C.R. 440, 151 D.L.R. (4<sup>th</sup>) 1 (Fed.), para. 1, 7-9, 30-31, 34, 55-57, CB I., p. 118
3. *Masters v. Ontario* (1994), 18 O.R. (3d) 551 (Div. Ct.), 115 D.L.R. (4<sup>th</sup>) 319, CB I., p. 129

D. Domestic Affairs of Private Associations

1. *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] S.C.R. 165; 97 D.L.R. (4<sup>th</sup>) 17, CB I., p. 151

**CLASS #7 - TUESDAY, JANUARY 29**

E. Applications for Benefits/Licences

1. *Hutfield v. Board of Fort Saskatchewan General Hospital District No. 98* (1986), 24 Admin. L.R. 250 (Alta. Q.B.) , CB I., p. 157
2. *Toronto Independent Dance Enterprise v. Canada Council*, [1989] 3 F.C. 516, 60 D.L.R. (4<sup>th</sup>) 503 (T.D.) , CB I., p. 174
3. *Comeau's Seafood Ltd. v. Canada*, [1997] 1 S.C.R. 12, CB I., p. 180
4. *Everett v. Canada (Minister of Fisheries and Oceans)* (1994), 169 N.R. 100 (F.C.A.) , CB I., p. 187



### **CLASS #8 - THURSDAY, JANUARY 31**

#### **IV. Sources of Procedural Fairness: Statutes, Regulations, Procedural Codes, Policies & Rules**

##### **A. Statutes and Regulations**

1. *Ontario Disability Support Program Act*, S.O. 1997, c.25, Schedule B and O.Reg.222/98, as amended and O.Reg.562/05, as amended (excerpts) , CB I., p. 192
2. *University of Toronto Act, 1971*, S.O. 1971, c.56 and Code of Behaviour on Academic Matters (June 1, 1995) , CB I., p. 235

### **CLASS #9 - TUESDAY, FEBRUARY 5**

##### **B. Policies and Rules**

1. Mullan, pp. 675-679 & 684, CB I., p. 264
2. *Capital Cities v. CRTC*, [1978] 2 S.C.R. 141, CB I., p. 270
3. *Ainsley Financial Corp. v. Ontario Securities Commission* (1994), 21 O.R. (3d) 104 (C.A.) , CB I., p. 276
4. *Thamotharem v. Canada (Minister of Citizenship & Immigration)*, [2007] F.C.J. No. 734, CB I., p. 280
5. Social Benefits Tribunal – Practice Directions 2 and 3, CB I., p. 300

### **CLASS #10 - THURSDAY, FEBRUARY 7**

##### **C. Procedural Codes: Statutory Powers Procedure Act**

1. *Statutory Powers Procedure Act*, R.S.O. 1990, c.22, CB II., p. 1
2. *Royal Commission Inquiry into Civil Rights*, Report Number One, Volume 1 (Queen's Printer, 1968) Chapter 14 ("McRuer Report"), CB II., p. 23

### **CLASS #11 - TUESDAY, FEBRUARY 12**

#### **V. Procedural Rights – Elements of the Duty of Fairness**

##### **A. Hearing Stage – Oral Hearings, Public Hearings**

1. *Khan v. University of Ottawa* (1997), 34 O.R. (3d) 535 (C.A.), CB II., p. 28

2. *Xwave Solutions Inc. v. Canada (Public Works & Government Services)*, (2003) 5 Admin. L.R. (4<sup>th</sup>) 280 (FCA) , CB II., p. 40.

B. Legitimate Expectations

1. *Mullan*, pp. 183-203, CB II., p. 47
2. *Khadr v. Canada (A.G.)*, 2006 F.C.J. No. 888 (F.C.A.), CB II., p. 58
3. *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, paras. 53-64, CB II., p. 70

**CLASS #12 - THURSDAY, FEBRUARY 14**

C. Notice and Scope of Hearing:

1. *Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission)*, [1995] 2 S.C.R. 781, 125 D.L.R. (4<sup>th</sup>) 471, CB II., p. 76
2. *Henderson v. College of Physicians and Surgeons of Ontario*, [2003] O.J. No. 2213 (C.A.), CB II., p. 81
3. *Wong v. College of Traditional Chinese Medical Practitioners and Acupuncturists of British Columbia*, [2005] B.C.J. No. 2219 (C.A.) , CB II., p. 88
4. *Canada (CRTC) v. CTV Television Network*, [1982] 1 S.C.R. 530, (p. 2, 12-13), CB II., p. 96
5. *SPPA*, ss. 6, 7 and 8, CB I., p. 1.

D. Disclosure and Discovery

1. *Deloitte & Touche LLP v. Ontario (Securities Commission)*, [2003] 2 S.C.R. 713; 232 D.L.R. (4<sup>th</sup>) 1, CB II., p. 99
2. *Pritchard v. Ontario (Human Rights Commission)*, [2004] 1 S.C.R. 809, 238 D.L.R. (4<sup>th</sup>) 1, CB II., p. 106
3. *Ontario Human Rights Commission v. Dofasco* (2001), 57 O.R. (3d) 693 (C.A.), CB II., p. 109
4. *May v. Ferndale Institution*, [2005] 3 S.C.R., 809, paras. 89-120, CB II., p. 119

\*\*\*\*\*

**READING WEEK**

\*\*\*\*\*

**CLASS #13 - TUESDAY, FEBRUARY 26**

E. Right to Counsel and Cross-Examination

1. *Mullan*, pp. 456-462, CB II., p. 125
2. *Dehghani v. Canada (Minister of Employment and Immigration)*, [1993] 1 S.C.R. 1053; 101 D.L.R. (4<sup>th</sup>) 654, CB II., p. 129
3. *Egglestone v. Ontario (Advisory Review Board)* (1983), 150 D.L.R. (3d) 86 (Ont. Div. Ct.), CB II., p. 134

F. Decision on the Record and Reasons

1. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4<sup>th</sup>) 193, CB I., p. 47
2. *Kane v. University of British Columbia*, [1980] 1 S.C.R. 1105, 110 D.L.R. (3d) 311, CB II., p. 144
3. *Gray v. Ontario (Disability Support Program, Director)*, [2002] O.J. No. 1531, 59 O.R. (3d) 364 (C.A.), CB II., p. 150

**CLASS #14 - THURSDAY, FEBRUARY 28**

VI. Bias

A. Impartiality – Personal Interest, Prejudgment, Attitudinal Bias

1. *R. v. Valente* (1985), 24 D.L.R. (4<sup>th</sup>) 161 (S.C.C.), CB II., p. 155
2. *Old St. Boniface Residents Assn. v. Winnipeg (City)* (1990), 75 D.L.R. (4<sup>th</sup>) 385 (S.C.C.), CB II., p. 172
3. *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623, 89 D.L.R. (4<sup>th</sup>) 289, CB II., p. 180
4. *Baker*, pp. 220-223, para. 45-50, CB I., p. 47

**CLASS #15 - TUESDAY, MARCH 4**

B. Tribunal Impartiality and Independence

1. *International Woodworkers of America, Local 2-69 v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, 68 D.L.R. (4th) 524, CB II., p. 189
2. *Re Katz and British Columbia Securities Commission et al.* (1995), 128 D.L.R. (4th) 424 (B.C.C.A.); aff'd. 139 D.L.R. (4th) 575 (S.C.C.), CB II., p. 206

#### **CLASS #16 - THURSDAY, MARCH 6**

##### **C. Structural Independence**

1. *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3, 122 D.L.R. (4th) 129, CB II., p. 217
2. *Ocean Port Hotel Ltd. v. British Columbia (Liquor Control and Licensing Branch, General Manager)*, [2001] 2 S.C.R. 781, 204 D.L.R. (4th) 33, CB II., p. 237

#### **CLASS #17 - TUESDAY, MARCH 11**

##### **VII. Tribunal Jurisdiction - Constitution and Human Rights Codes**

1. *Nova Scotia (Worker's Compensation Board) v. Martin*, [2003] 2 S.C.R. 504; 231 D.L.R. (4th) 385, CB II., p. 247
2. *Paul v. British Columbia (Forest Appeals Commission)*, [2003] 2 S.C.R. 585; 231 D.L.R. (4th) 449, CB II., p. 263
3. *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513; 266 D.L.R. (4th) 287, CB II., p. 275

#### **CLASS #18 - THURSDAY, MARCH 13**

##### **VIII. Statutory Appeals and Judicial Review: Overview**

1. *ODSPA*, s.31, CB I., p. 192
2. *Crevier v. Quebec (Attorney General)*, [1981] 2 S.C.R. 220, 127 D.L.R. (3d) 1, CB III., p. 1
3. *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1, as amended, CB III., p. 9

#### **CLASS #19 - TUESDAY, MARCH 18**

##### **IX. Standard of Review**

##### **A. The Modern Approach**

1. *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, [2003] S.C.R., 223 D.L.R. (4th) 599, CB III., p. 13
2. *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247; 223 D.L.R. (4th) 577, CB III., p. 23
3. *Mullan*, pp. 701-707; 714-723, CB III., p. 35

#### **CLASS #20 - THURSDAY, MARCH 20**

#### **TO BE ASSIGNED**

#### **CLASS #21 - TUESDAY, MARCH 25**

##### **B. Discretion and Justiciability**

1. *Mullan*, pp. 951-953, CB III., p. 44
2. *Roncarelli v. Duplessis*, [1959] S.C.R. 121, pp. 130-145, CB III., p. 47
3. *Multi-Malls Inc. v. Ontario (Minister of Transport & Communications)* (1976), 14 O.R. (2d) 49, 73 D.L.R. (3d) 18 (C.A.) , CB III., p. 58
4. *Operation Dismantle Inc. v. R.*, [1985] 1 S.C.R. 441, 18 D.L.R. (4th) 481 at pp. 481-494, CB III., p. 68
5. *Black v. Canada (Prime Minister)* (2001), 54 O.R. (3d) 215, pp. 223-239 (C.A.) , CB III., p. 89

#### **CLASS #22 - THURSDAY, MARCH 27**

##### **C. Parties and Standing**

1. *Northwestern Utilities Ltd. v. City of Edmonton*, [1979] 1 S.C.R. 684, pp. 706-711, CB III., p. 102
2. *Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner)* (2005), 75 O.R. (3d) 309, pp. 315-324 (C.A.) , CB III., p. 113
3. *Canadian Council of Churches v. Canada (Minister of Employment & Immigration)*, [1992] 1 S.C.R. 236, 88 D.L.R. (4th) 193, pp. 197-204, CB III., p. 122
4. *Sutcliffe v. Ontario (Minister of the Environment)* (2004), 69 O.R. (3d) 257 (C.A.) , CB III., p. 131

**CLASS #23 - TUESDAY, APRIL 1**

D. Collateral Attacks

1. *R. v. Consolidated Maybrun Mines Ltd.*, [1998] 1 S.C.R. 706, 158 D.L.R. (3d) 193, pp. 206-214, CB III., p. 137

E. Exhaustion of Alternative Remedies/Prematurity

1. *Canadian Pacific Ltd. v. Matsqui Indian Band*, pp. 149-151, para. 54-60, CB II., p. 217
2. *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561, pp. 587-594, CB III., p. 151

**CLASS #24 - THURSDAY, APRIL 3**

F. Remedies

1. *Seaway Trust Co. v. Ontario* (1983), 41 O.R. (2d) 501 (Div. Ct.); 41 O.R. (2d) 532 (C.A.), CB III., p. 172
2. *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3, 232 D.L.R. (4th) 577, pp. 597-606, CB III., p. 184
3. *Mt. Sinai Hospital v. Quebec (Minister of Health and Social Services)*, [2001] 2 S.C.R. 281, 200 D.L.R. (4th) 193, pp. 223-242, CB III., p. 203

**CLASS #25 - TUESDAY, APRIL 8**

Exam Review

::ODMA\PCDOCS\TOR01\3405963\6